

“exterior body spray” and “letterpress coating”.

- Specifies VOC limits for letterpress coatings, other coil coatings, and end sealing compounds applied to pet food and non-food containers,
- Removes portions containing Air Pollution Control Officer Discretion,
- Requires air pollution control systems installed to include emissions collection systems with an overall capture and control device efficiency of at least 85 percent by weight,
- Adds recordkeeping requirements for solvent usage and sources using noncomplying coatings,
- Allows the measurement of VOC content in letterpress coatings to be determined using SDCAPCD's Method 24D,
- Requires the measurement of VOC content in noncomplying coatings to be conducted in accordance with EPA Methods 18 and 25 or 25A,
- Includes requirements when perfluorocarbon (PFC) compounds and other exempt compounds are present in the coating, cleaning, or surface preparation material.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, PCAPCD Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations, are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 27, 1994.

Felicia Marcus,

Regional Administrator.

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40 CFR Part 52

[W145–01–6501; FRL–5136–3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposing to approve the State Implementation Plan (SIP) revision, for the Milwaukee ozone nonattainment area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties), as submitted by the State of Wisconsin. The purpose of the revision is to offset any growth in emissions from growth in vehicle miles traveled (VMT), or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other measures, as needed to comply with Reasonable Further Progress (RFP) milestones of the Clean Air Act (Act). Wisconsin submitted the implementation plan revision to satisfy the statutory mandates, found in section 182 of the Act, which requires the State to submit

a SIP revision that identifies and adopts specific enforceable Transportation Control Measures (TCM) to offset any growth in emissions from growth in VMT, or number of vehicle trips, in severe ozone nonattainment areas.

The rationale for this proposed approval is set forth below; additional information is available at the address indicated below.

DATES: Comments on this proposed rule must be received on or before February 9, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the Wisconsin SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Wisconsin SIP revision request is available for inspection at the office of: Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Michael G. Leslie, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Act requires States that contain severe ozone nonattainment areas to adopt transportation control measures and transportation control strategies to offset growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other measures) as needed to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are set forth in 182(d)(1)(A) and discussed in the General Preamble to Title I of the Act (57 FR 13498 April 16, 1992).

For certain program required under the Act (including VMT-Offset), USEPA had earlier adopted a policy pursuant to section 110(k)(4) of the Act to conditionally approve SIPs that committed to provide the USEPA by a

date certain. That interpretation was challenged in the *Natural Resources Defense Council v. Browner* consolidated lawsuits brought in the United States Court of Appeals for the District of Columbia Circuit. In a full opinion dated May 6, 1994 (and in a March 8, 1994 and April 22, 1994 Amended order issued earlier) the court found that USEPA's conditional approval interpretation exceeded USEPA's statutory authority. While the court opinion did not specifically address the VMT offset program in its opinion or orders, USEPA believes that the courts general conclusion that the Agency's construction of the conditional approval provision was unlawful, and precludes USEPA from taking action to approve any submitted VMT offset committal sip revision request.

On October 4, 1993 the USEPA published a proposed rule (58 FR 51593) to conditionally approve Wisconsin's commitment for the VMT Offset requirement. In light of the court opinion, USEPA has decided not to go forward with the conditional approval of the VMT Offset committal SIPs, but believes that it would be appropriate to interpret the VMT Offset provisions of the Act to account for how States can practicably comply with each of the provision's elements, as discussed in detail below.

The VMT Offset provision requires that States submit by November 15, 1992 specific enforceable TCMs and Strategies to offset any growth in emissions from growth VMT or number of vehicle trips, sufficient enough to allow total area emissions to comply with the RFP and attainment requirements of the Act. The USEPA has observed that these three elements (i.e. offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standard (NAAQS) create a timing problem of which Congress was perhaps not fully aware. As discussed in USEPA's April 16, 1992 General Preamble to Title I, ozone areas affected by this provision were not otherwise required to submit SIPs that show attainment of the 1996 15 percent Rate-of-Progress (ROP) milestone until November 15, 1993 and likewise are not required to demonstrate post-1996 RFP and attainment of the NAAQS until November 15, 1994. The SIP revisions due on November 15, 1993 and November 15, 1994 are broader in scope than growth in VMT or vehicle trips in that they necessarily address emissions trends and control measures for non motor vehicle emissions sources and, in the case of attainment

demonstrations, complex photochemical modeling studies.

The USEPA does not believe that Congress intended the VMT Offset provisions to advance the dates for these broader submissions. Further, USEPA believes that the November 15, 1992 date would not allow sufficient time for States to have fully developed specific sets of measures that would comply with all of the elements of the VMT Offset requirements of section 182(d)(1)(A) over the long term. Consequently, USEPA believes it would be appropriate to interpret the Act to provide the following alternative set of staged deadlines for submittal of the elements of the VMT Offset SIP.

II. Review Criteria

Section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15 percent periodic reduction requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

Under this approach, the first element, the emissions growth offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the RFP or attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset element. As submitting this element does not implicate the timing problem of advancing the deadlines for RFP and attainment demonstrations,

USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element. The first element requires that a State submit a revision that demonstrates the trend in motor vehicle emissions from a 1990 baseline to the year for attaining the NAAQS for ozone. As described in the General Preamble, the purpose is to prevent growth in motor vehicle emissions from canceling out the emissions reduction benefits of the federally mandated programs in the Act. The USEPA interprets section 182(d)(1)(A) to require that sufficient measures be adopted so that projected motor vehicle VOC emissions will never be higher during the ozone season in 1 year, than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline and is above and beyond the separate requirements for the RFP and attainment demonstration.

The ceiling is therefore defined, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling would include the effects of Federal measures such as new motor vehicle standards, Phase II Reid Vapor Pressure (RVP) controls, and reformulated gasoline, as well as Act mandated SIP requirements such as enhanced inspection and maintenance, the clean-fuel vehicle fleet program, and the employee commute options (ECO) program. The ceiling would also include the effect of forecasted growth in VMT and vehicle trips in the absence of new discretionary measures to reduce them. Any VMT reduction measures or other actions to reduce motor vehicle emissions adopted since November 15, 1990 that are not specifically required for the area by another provision of the Act would not be included in the calculation of the ceiling.

If projected motor vehicle emissions for the ozone season in 1 year are not higher than the projected motor vehicle emissions during the previous year's ozone season, given the control measures in the SIP, the VMT offset requirement is satisfied.

Projected motor vehicle emissions must be held at or below the level of the ceiling. Offset measures implemented earlier than required and sufficient to prevent an emissions upturn, will be viewed as a temporary reduction in emissions to a level below the ceiling required by this provision. In this case, the forecasted motor vehicle emissions could increase from 1 year to the next, as long as forecasted motor emissions never exceed the ceiling.

Under the staged submittal approach, the second element, which requires the VMT offset SIP to be consistent with the 15 percent ROP reduction requirements of the Act, was due on November 15, 1993 which is the same date on which the 15 percent ROP SIP was due under section 182(b)(1) of the Act. USEPA believes that it is reasonable to extend the deadline of this element to the date on which the entire 15 percent periodic reduction SIP was due under section 182(b)(1)(A) of the Act, since this allows States to develop a more comprehensive strategy to address the ROP requirement and assure that the TCM elements of that strategy required under section 182(d)(1)(A) are consistent with the remainder of the ROP demonstration.

The third element requires the VMT offset SIP to comply with the post-1996 RFP and attainment requirements of the Act and to identify and adopt specific enforceable transportation control strategies and TCMs. The due date for submittal of this element is extended to November 15, 1994 under the staged submittal approach. USEPA believes that the deadline for this element can be reasonably extended to November 15, 1994 because the broader post-1996 RFP and attainment SIP demonstrations are not due until that date. This extension will enable the State to ensure that the TCM elements of the broader submittals are consistent with the States' overall post-1996 RFP and attainment strategies. Indeed, it is arguably impossible for a State to make the showing for the third element until the broader demonstrations have been developed by the State, and extending the submittal date will result in a better program for reducing emissions in the long term.

III. Summary of State Submittal

The State of Wisconsin has submitted a SIP revision implementing the first two required elements contained in section 182(d)(1)(A) of the Act.

Mobile source emissions are a function of many specific factors including vehicle fleet, age and mix, the Reid Vapor Pressure (RVP) fuel volatility, and temperature. The magnitude of mobile source emissions is

particularly a function of vehicle speeds and the amount of VMT. To obtain mobile source emissions, the usual process is to multiply VMT by an appropriate emission factor to derive an estimate of total motor vehicle emissions.

The State has met the requirement of the first element of section 182(d)(1)(A) by forecasting VMT from the year 1990 to the year 2007, and then estimating mobile source emissions by applying USEPA's required mobile source emissions factor model MOBILE5a to generate the appropriate emissions factors for the analysis. This analysis shows a continued decrease in emissions throughout the analysis period without the implementation of additional TCMs.

In developing the VMT offset program, WDNR modeled a mobile source control program for the offset analysis which included: the Federal Motor Vehicle Control Program, Phase II RVP controls, Reformulated gasoline, VMT reductions due to the implementation of the ECO program, a Enhanced Inspection/Maintenance (I/M) program, and an Anti-Tampering Program (ATP). WDNR generated Emissions Factors (EF) for the analysis using the USEPA mobile source emissions factor model MOBILE5a.

The first step in the analysis of projected mobile source emissions was to project the area's VMT from the 1990 levels to 2007. The 1990 level of VMT (estimated to be 37,988,300 miles per day) was developed for the 1990 base year inventory, and was submitted to USEPA on July 16, 1993 was prepared by the Southeastern Wisconsin Regional Planning Commission (SEWRPC), the Metropolitan Planning Organization for the severe ozone nonattainment area. The aggregate 1990 VMT level was then projected to year 2007 level by using a 2.0 percent growth rate. This growth rate corresponds to the growth rate used in the ROP plan. The 2.0 percent per year increase in VMT will result in a total VMT growth of 40 percent for the analysis period.

The aggregate VMT was adjusted for the implementation of the ECO program. In years 1996 and 1997 the ECO program was assumed at two-thirds effectiveness, yielding a 2-percent reduction of VMT. In years 1998 through 2007 the ECO program was assumed at full effectiveness, yielding a 3-percent reduction of VMT.

The next step in the analysis was to develop an aggregate EF for each analysis year. Four speeds were modeled to obtain EFs for the analysis: 15 mph, 25 mph, 40 mph, and 62 mph. These speeds were used to represent the

varied operating conditions which exist for the severe ozone nonattainment area roadway system. The percentages of aggregate VMT for the speeds of 15 mph, 25 mph, 40 mph, and 62 mph, were 10 percent, 30 percent, 39 percent, and 21 percent, respectively. These VMT percentages can be directly translated into EF percentages, i.e., $EF_{15\text{ mph}} = 0.10 EF_{\text{total}}$, $EF_{25\text{ mph}} = 0.30 EF_{\text{total}}$, $EF_{40\text{ mph}} = 0.39 EF_{\text{total}}$, $EF_{62\text{ mph}} = 0.21 EF_{\text{total}}$. Each of the generated emissions factors were multiplied by the appropriate EF percentage and then added to yield an aggregate emissions factor. The percentage of breakdown in VMT as a percentage of total VMT is based on the information included in the 1990 base year inventory.

The aggregate average was multiplied by an inventory adjustment factor of 1.0207 yielding a Final Emissions Factor (FEF). This inventory adjustment was performed so that the 1990 level of total emissions in the VMT offset analysis was consistent with 1990 base year inventory (a total of 147.2 tons/day for the six severe ozone nonattainment counties). Finally, the amount of VOC emissions per year was calculated by multiplying the FEF and the aggregate VMT adjusted for ECO implementation.

The State of Wisconsin's submittal predicts that the growth in VMT in the Milwaukee severe ozone area will not result in a mobile source emissions upturn. This prediction of a continued decline in mobile source emissions beyond the attainment year demonstrates satisfaction of the first element.

Wisconsin submitted a 15-percent ROP SIP for Milwaukee severe ozone to the USEPA in November 1993, but the submittal was found incomplete in a letter dated January 21, 1994. Although the ROP SIP contained feasible measure that could add up to the required 15 percent reduction in emissions, the SIP submittal was found incomplete because it lacked enforceable regulations. In the submittal, the State indicated it would attain its 15 percent reduction in VOCs by 1996 without relying on TCMs. Consequently, Wisconsin has shown that it does not plan to submit specific enforceable TCMs for the second VMT offset SIP element.

The State is in the process of developing fully enforceable regulations that achieve a 15-percent reduction in VOCs. The USEPA is proposing approval of the second VMT offset SIP element, but will not take final action on this element until the State has submitted a complete 15 percent ROP plan and the USEPA is certain that it

need not evaluate these TCMs for purposes of the second element.

WDNR is currently working with the State Department of Transportation, SEWRPC, and the Lake Michigan Regional States to assess the emissions reductions and the need to implement TCMs to meet the post-1996 RFP and attainment demonstration for the area. The State is required to submit a list of TCMs used to meet the post-1996 and attainment requirements of the Act by November 15, 1994. This third element of the VMT offset SIP will be the subject of a future rulemaking.

II. Proposed Rulemaking

In this action, USEPA is proposing to approve the first two elements of the VMT offset SIP revision submitted by the State of Wisconsin. It is noted that the USEPA will not take final action on the second element until the State has submitted a complete 15 percent ROP plan. The third element of the Wisconsin VMT offset SIP will be the subject of a future rulemaking. Public comment is solicited on the request SIP revision and USEPA's proposed action. Comments received by February 9, 1995 will be considered in the development of USEPA's final rule.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Procedural Background

This document has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation.

Administrative Requirements

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do

not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric CO. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air Pollution Control, Ozone.

Authority: 42 U.S.C. 7401-7671q.

Dated: December 19, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95-551 Filed 1-9-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[IN42-1-6344; FRL-5136-5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 25, 1994, the State of Indiana submitted regulations as a revision to the ozone State Implementation Plan (SIP), governing the control of Volatile Organic Compound (VOC) emissions from graphic arts facilities, as part of the Reasonably Available Control Technology (RACT) Catch-up requirements. Amendments to the graphic arts operation regulation, Indiana Administrative Code 326 IAC 8-8-5 are intended to require existing graphic arts operations, which have the potential to emit 25 tons per year or more of VOC, to comply with VOC RACT regulations previously applicable to graphic arts operations with the potential to emit 100 tons per year or more of VOC. However, the graphic arts regulation contains insufficient recordkeeping and reporting requirements. Because the State has

committed to correcting this deficiency by January 31, 1996, USEPA is proposing conditional approval of this SIP revision request. If the State fails to correct the deficiency, the conditional approval will convert to a disapproval.

DATES: Comments on this revision request and on the proposed USEPA action must be received by February 9, 1995.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address:

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Rosanne Lindsay at (312) 353-1151, before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne Lindsay at (312) 353-1151.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The State of Indiana submitted a revision request for its Ozone SIP on February 25, 1994, amending the graphic arts rule. The amendments for graphic arts (326 IAC 8-5-5) function to reduce the source size applicability cut-off for graphic arts facilities located in the severe ozone nonattainment area (Lake and Porter Counties) from 100 to 25 tons of VOC per year (potential to emit) as required by the Clean Air Act (the Act), as amended in 1990. The USEPA, on May 17, 1993, commented on a draft version of this regulation, noting several deficiencies, including the lack of recordkeeping and reporting requirements to show compliance with the regulation required by section 182(b)(2) of the Act. The State of Indiana responded with a copy of the current recordkeeping and reporting rule (8-1-1), and stated that USEPA had not previously required any revisions of the rule based on numerous recent changes to the VOC Reasonably Available Control Technology (RACT) rules. The rules were adopted by the Indiana Pollution Control Board on June 2, 1993.

II. Analysis of State Submittal

The State of Indiana has corrected most of the deficiencies noted in the USEPA comments of May 17, 1993. However, the recordkeeping and